

**BEFORE THE STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	DIVISION OF WATER
)	POLLUTION CONTROL
CITY OF DECHERD)	
)	
RESPONDENT)	CASE NO. 07-129D
)	OGC CASE NO.

COMMISSIONER'S ORDER AND ASSESSMENT

NOW COMES James H. Fyke, Commissioner of the Tennessee Department of Environment and Conservation, and states:

PARTIES

I.

James H. Fyke is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department")

II.

The City of Decherd (hereinafter the "Respondent") owns and operates a wastewater treatment plant in Franklin County, Tennessee (hereinafter the "WWTP"). Service of process may be made on the Respondent through the Honorable Betty Don Henshaw, P.O. Box 488 Decherd, Tennessee 37324.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Water Quality Control Act of 1977 (hereinafter the "Act"), Tennessee Code Annotated (hereinafter "T.C.A.") § 69-3-101 et seq, has occurred or is about to occur, the Commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, pursuant to T.C.A. §§ 69-3-115 and 69-3-116, the Commissioner has authority to assess civil penalties against any violator of the Act and to assess damages incurred by the state resulting from the violation(s). Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as Chapters 1200-4-3–4 of the *Official Compilation: Rules and Regulations of the State of Tennessee*.

IV.

The Respondent is a "person" as defined by T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain a permit from the Department prior to discharges into waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Rule 1200-4-5-.07 states in part that a set of effluent limitations will be required in each permit that will

indicate adequate operation or performance of treatment units used and that appropriately limit those harmful parameters present in the wastewater. Furthermore, it is unlawful for any person to increase, in volume or strength, any wastes in excess of the permissive discharges specified under any existing permit.

VI.

Wagner Creek, referred to herein, is “waters of the state,” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” this water body has been classified for the following uses: industrial water supply, fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VII.

On June 30, 2004, the Department’s Division of Water Pollution Control (hereinafter “Division”) issued National Pollutant Discharge Elimination System (NPDES) Permit TN0020508 (hereinafter the “permit”) to the Respondent. The permit became effective August 1, 2004 and included a second set of effluent limits that became effective on June 1, 2006, when the plant’s design capacity expanded from 0.5 million gallons per day (“MGD”) to 1.0 MGD. The permit expired on March 31, 2007 and is currently in the process of being reissued. The permit authorizes the Respondent to discharge treated municipal wastewater from the WWTP to receiving waters named

Wagner Creek, in accordance with effluent limitations, monitoring requirements and other conditions set forth therein.

VIII.

On July 26, 2005, the Division conducted a Compliance Evaluation Inspection (hereinafter "CEI") at the WWTP. The purpose of the CEI was to evaluate compliance with the permit and to review the operation of the wastewater treatment system. It was noted that the Respondent had applied for and received approval for an upgrade to the existing treatment plant that would upgrade the design capacity from 0.5 MGD to 1.0 MGD. During the CEI, the Division observed that the following repairs and/or maintenance were needed:

- a) At the plant headworks, the mechanical bar screen was inoperable;
- b) There were excessive amounts of algae on the walls, on the weir plates and in the clarifier;
- c) The grit pump on the grit chamber was out of service; and
- d) The effluent flow was not being measured.

A letter documenting the findings of the CEI was sent to the Respondent on August 8, 2005.

IX.

On June 21, 2006, the Division conducted a pretreatment technical assistance visit (hereinafter "PTAV") at the WWTP. The Division observed the following deficiencies in the Respondent's record keeping at the plant:

- a) the Respondent failed to maintain the industrial user inspection reports in one location;
- b) the industrial user sample holding times were not in conformity with EPA standard testing methods;
- c) there were not signatures on the chain of custody for lab samples; and
- d) there was not a slug discharge control plan for the industrial user in the permit.

The Division sent a letter to the Respondent on December 21, 2006 documenting the findings of the PTAV.

X.

During the monitoring periods from January 1, 2006, through January 31, 2007, the Respondent failed to report fourteen permit-limited parameters to the Division on Discharge Monitoring Reports ("DMRs"): one failure to report whole effluent toxicity testing for *Ceriodaphnia dubia*, one failure to report whole effluent toxicity testing for *Pimephales promelas*, five failures to report total phosphorous, and seven failures to report total nitrogen. During the same period, the Respondent violated the terms of its permit thirteen times, as described below:

Parameter	# Exceedances
Total Nitrogen (as Ammonia)	7
<i>Pimephales promelus</i>	3
<i>Ceriodaphnia dubia</i>	1
Total Phosphorous	1
Overflow (Wet Weather)	1

VIOLATIONS

XI.

By discharging wastewater effluent from the WWTP in violation of the terms and conditions of the permit and by failing to monitor for permit-limited parameters, the Respondent has violated T.C.A. §§ 69-3-108(b) and 69-3-114(b) which read in relevant part as follows:

T.C.A. § 69-3-108(b) reads in relevant part as follows:

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

§ 69-3-114(b) reads in relevant part as follows:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

ORDER AND ASSESSMENT

XII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115, and 69-3-116, I, James H. Pyke, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, within ONE HUNDRED EIGHTY (180) DAYS of receipt of this ORDER and ASSESSMENT (hereinafter "Order"), submit for approval by the Division a corrective action plan/engineering report (hereinafter "CAP/ER") on the system. The CAP/ER shall include, but shall not be limited to, modifications to equipment or operations necessary to comply with all provisions of the subject NPDES permit and a project schedule including timetables for beginning and completing all activities. The Respondent shall submit the CAP/ER in duplicate to the manager of the Division's Environmental Field Office in Knoxville ("EFO-CL) at 2484 Park Plus Drive, Columbia, Tennessee 38401 and to the manager of the Enforcement and Compliance Section of Water Pollution Control at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243.
2. The Respondent shall, within NINETY (90) DAYS of receipt of the Division's written approval of the CAP/ER, initiate the actions outlined in the CAP/ER, including those items required by the Division as comments in the approval of the CAP/ER. At the time of first action on the CAP/ER, the Respondent shall notify the Division in writing of the action. This written notification shall be submitted in

duplicate to the manager of the EFO-CL and to the manager of the Enforcement and Compliance Section of Water Pollution Control at the respective addresses in Item 1.

3. All scheduled activities in the approved CAP/ER shall be complete by March 31, 2010. The Respondent shall send notice of completion to the manager of the EFO-CL and to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1.
4. Within NINETY (90) DAYS of receipt of this Order, the Respondent shall submit to the Division, a sewer overflow response plan (hereinafter "SORP"). The SORP shall include procedures for minimizing health impacts and shall include measures to be taken when overflows discharge on local streets or other public areas. The SORP shall also set out appropriate measures for the notification of affected property owners and stream users by the Respondent. The SORP shall provide for notification of the news media by the Respondent when necessary to protect public health. The SORP shall provide for specific procedures for notifying known downstream users in the event that untreated wastewater is discharged to waters of the state by sanitary sewer overflow (SSO). These procedures shall include, but not be limited to, provisions for posting warning signs at places where the general public could gain access to polluted waters. Further, Respondent shall take appropriate action to see that posted signs shall remain in place until in-stream monitoring reveals that the water body has returned to normal background conditions. In the event that the Division requires the Respondent to modify/revise the SORP, the Respondent shall submit the modified/revised SORP to the Division within THIRTY (30) days of the date of

notification. The SORP shall be submitted to the EFO-CL and a copy to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1.

5. Within ONE HUNDRED TWENTY (120) DAYS of written approval by the Division, the Respondent shall fully implement the SORP. The Respondent shall notify the division, in writing, once the SORP has been fully implemented. The notification shall be submitted to the EFO-CL and a copy to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1.

6. A. Within ONE HUNDRED EIGHTY (180) days of receipt of this Order, the Respondent shall revise or develop, and submit to the Division for review and comment, the following Maintenance Operation and Management (hereinafter "MOM") programs as identified in subparagraph 6(B) below. The revised programs shall be submitted to the EFO-CL and a copy to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1. Each individual MOM program will have a sufficient level of documentation to assure the following:

- i. The program is specific to, and tailored for, the utility's infrastructure;
- ii. The program has a written purpose explaining why the program is needed;
- iii. The program has specific written goal(s) establishing the accomplishment(s) desired for the current fiscal year;
- iv. The program has the details of the activities and procedures that are followed to implement the program written down in the form of standard operating procedures that are used by the utility's personnel;

- v. The program has established appropriate performance procedures which are tracked by management; and
- vi. The program has a written procedure requiring periodic review, evaluation, and any necessary revision.

B. The following programs have been identified by the division as significant with respect to Madisonville and are in need of development or revision. All newly developed programs and revised programs shall meet the narrative criteria identified in 6(A)(i) through 6(A)(vi) above. Any revisions to existing programs must account for specific concerns, which the Division may have identified below.

- a. Sewerage Assessment Priority Parameters Program
- b. Routine Manhole Inspection Program
- c. Flow Monitoring Program to Support Engineering Studies
- d. Closed Circuit Television Program to Support Sewer Assessment
- e. Gravity System Defect Analysis Program
- f. Smoke Testing Program
- g. Gravity Lines Rehabilitation Program
- h. Manhole Rehabilitation Program
- i. Scheduled Pump Stations Operations Program
- j. Emergency Pump Station Operating Program
- k. Grease Control Program
- l. Mechanical Maintenance Program
- m. Capital Improvement Program
- n. Work Order and Complaint Management Program
- o. System Inventory Program

p. Capacity Assurance Program for New Connections

q. Long-Term Capacity Assurance Protocols

7. The Respondent shall submit an annual report detailing all updates and changes to any of the individual MOM programs. Each annual report shall be due on March 31st and shall be based upon the activities conducted in the previous calendar year. The first annual report shall be submitted on March 31, 2009, for the 2008 calendar year. The Respondent shall submit all annual reports to the EFO-CL and a copy to the manager of the Enforcement and Compliance Section at the respective addresses in Item 1. Each annual report shall also include the following:

- i. A completed system profile and performance summary as outlined in Exhibit A;
- ii. A completed system-wide MOM programs recent performance summary as outlined in Exhibit B;
- iii. A completed sub-basin summary statistics summary spreadsheet as outlined in Exhibit C;
- iv. A five year capital improvement program with projected budgets for each item;
- v. A narrative description of the status of all contracted wastewater improvement projects, all in house replacement and rehabilitative projects, and the funding status of all improvement projects; and
- vi. Appropriate maps and any additional documents necessary to fully describe the system status and aid in review.

8. Within 1 year of receipt of this Order, the Respondent shall maintain the capacity, collection, and treatment evaluation protocols for the evaluation of new customer

connections. These protocols shall include, but not be limited to, standard design flow rate assumptions (regarding pipe roughness, manhole head losses, "as-built" drawing accuracy [distance and slope], and water use [gallons per capita per day]), and projected flow impact modeling/calculation techniques. The program shall provide for certification of adequate capacity by a registered professional engineer. The program shall include an information management system for tracking the cumulative studies and relating studies to the infiltration/inflow reduction program.

9. Respondent shall be in compliance with the requirements of the Order no later than March 31, 2013.
10. The Respondent is hereby assessed a CIVIL PENALTY in the amount of **THIRTY-NINE THOUSAND FIVE HUNDRED DOLLARS (\$39,500.00)**, payable as follows:
 - i. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order, pay to the Department **NINE THOUSAND EIGHT HUNDRED AND SEVENTY-FIVE DOLLARS (\$9,875.00)**. Further, in the event of default, the Respondent is assessed an additional penalty of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$ 2,500.00)** for each and every day that the default continues. Said additional penalties are due and payable to the Division as they accrue.

ii. The Respondent shall, within THIRTY (30) DAYS of default, pay to the Department **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00)** if, and only if, the Respondent fails to comply with Item 1, above. Further, in the event of default, the Respondent is assessed an additional penalty of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$ 2,500.00)** for each and every day that the default continues. Said additional penalties are due and payable to the Division as they accrue.

iii. The Respondent shall, within THIRTY (30) DAYS of default, pay to the Department **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00)** if, and only if, the Respondent fails to comply with Item 2, above. Further, in the event of default, the Respondent is assessed an additional penalty of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$ 2,500.00)** for each and every day that the default continues. Said additional penalties are due and payable to the Division as they accrue.

iv. The Respondent shall, within THIRTY (30) DAYS of default, pay to the Department **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00)** if, and only if, the Respondent fails to comply with Item 3, above. Further, in the event of default, the Respondent is assessed an additional penalty of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$ 2,500.00)** for each and every day that the default continues. Said additional penalties are due and payable to the Division as they accrue.

v. The Respondent shall, within THIRTY (30) DAYS of default, pay to the Department **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00)** if, and only if, the Respondent fails to comply with Item 4, above. Further, in the event of default, the Respondent is assessed an additional penalty of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$ 2,500.00)** for each and every day that the default continues. Said additional penalties are due and payable to the Division as they accrue.

vi. The Respondent shall, within THIRTY (30) DAYS of default, pay to the Department **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00)** if, and only if, the Respondent fails to comply with Item 5, above. Further, in the event of default, the Respondent is assessed an additional penalty of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$ 2,500.00)** for each and every day that the default continues. Said additional penalties are due and payable to the Division as they accrue.

vii. The Respondent shall, within THIRTY (30) DAYS of default, pay to the Department **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00)** if, and only if, the Respondent fails to comply with Item 6, above. Further, in the event of default, the Respondent is assessed an additional penalty of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$ 2,500.00)** for each and every day that the default continues. Said additional penalties are due and payable to the Division as they accrue.

viii. The Respondent shall, within THIRTY (30) DAYS of default, pay to the Department **THREE THOUSAND DOLLARS (\$3,000.00)** to be paid in increments of **ONE THOUSAND DOLLARS (1,000.00)** per annual report if, and only if, the Respondent fails to comply with Item 7, above. **Further, in the event of default, the Respondent is assessed an additional penalty of TWO THOUSAND FIVE HUNDRED DOLLARS (\$ 2,500.00) for each and every day that the default continues.** Said additional penalties are due and payable to the Division as they accrue.

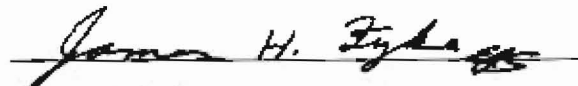
ix. The Respondent shall, within THIRTY (30) DAYS of default, pay to the Department **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00)** if, and only if, the Respondent fails to comply with Item 8, above. **Further, in the event of default, the Respondent is assessed an additional penalty of TWO THOUSAND FIVE HUNDRED DOLLARS (\$ 2,500.00) for each and every day that the default continues.** Said additional penalties are due and payable to the Division as they accrue.

x. The Respondent shall, within THIRTY (30) DAYS of default, pay to the Department **TWO THOUSAND ONE HUNDRED AND TWENTY-FIVE DOLLARS (\$2,125.00)** if, and only if, the Respondent fails to comply with Item 9, above. **Further, in the event of default, the Respondent is assessed an additional penalty of TWO THOUSAND FIVE HUNDRED DOLLARS (\$ 2,500.00) for each and every day that the default continues.** Said additional penalties are due and payable to the Division as they accrue.

11. All payments referenced above shall be made payable to the Treasurer, State of Tennessee and shall be addressed to Max A. Fleischer, Assistant General Counsel, Office of General Counsel, Tennessee Department of Environment and Conservation, 401 Church Street, L & C Tower, 20th Floor, Nashville, Tennessee 37243. All payments shall reference case number 07-0251.
12. Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.
13. The Director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of thirty days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation on this 20th day of June, 2007.



James H. Fyke
Commissioner of Environment and
Conservation

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109 and 69-3-115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must at the address set out below a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment.

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq. of the Uniform Administrative Procedures Act, and the Department of State's

Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization. It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the state of Tennessee.

At the conclusion of a hearing the Board has the authority to affirm or modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (from \$0 to \$10,000.00 per day per violation).

Furthermore, in the event the Board finds that the Respondent is responsible for the alleged violations after a hearing, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal should be addressed to Max A. Fleischer, Assistant General Counsel, Office of General Counsel, Tennessee Department of Environment and

Conservation, 401 Church Street, L & C Tower 20th Floor, Nashville, Tennessee 37243-1548. All other correspondence to demonstrate compliance with the requirements of the Order should be mailed and sent to the Division at the addresses identified in paragraph XX(1) of the Order.



Max A. Fleischer
Assistant General Counsel
Tennessee Department of
Environment & Conservation
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